IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.846 OF 2005

Smt. Kausalya Lalasaheb Bhandawalkar ..Appellant
Versus
Smt. Anusaya Tukaram Mandhare & Ors. ..Respondents

Mr.R.A.Thorat for appellant
Mr.S.S.Kulkarni for respondents

WITH

SECOND APPEAL NO.360 OF 2005

Shrui Kaluram Kondiba Pande .. ..Appellant
Versus
Khandu Bala Jagtap
since deceased through heirs .. ..Respondents

None for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH SEPTEMBER, 2005

P.C.:

1. Both these appeals arise out of common judgment and order passed by Addl. District Judge, Pune dated 14.4.2004 dismissing both the appeals and confirming the Judgment and Order passed by Civil Judge, Junior Division, Saswad dated 27.6.1997 decreeing the suit of the plaintiff.

2. I have heard the learned counsel for the appellant in Second Appeal No.846 of 2005 as well as for the respondent. None present for the appellant in Second Appeal No.360 of 2005, however, since both the appeals arise out of common judgment, instead of dismissing the Second Appeal No.360 of 2005 for default, I thought it fit to adjudicate both the appeals on the basis of record before the court, which is common in both the appeals.

3. The plaintiff filed suit for redemption of Gat No.225 situated at Village Mahur, Taluka Purandar, Dist.Pune. The plaintiff came with the case that there was suit transaction dated 14th December, 1978 in the nature of mortgage by conditional sale with the defendants and he was ready and willing to perform his part of contact in order to redeem the property and when the defendants refused to redeem the property the suit came to be filed. The defendants contested the suit on various grounds, inter alia, denying the allegations of the plaintiff submitting that the defendant no.6 was lawful possessor of and owner of 1/2 southern portion of the suit land and alleged mortgaged dated 14th December, 1978 was void ab-initio. On such and other grounds the

suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on the basis of available evidence on record and came to the conclusion that the plaintiff had proved that the suit transaction dated 14th December, 1978 was mortgaged by conditional sale and it was further proved that he was ready and willing to redeem the suit property. It was further held that the defendant no.6 failed to establish that he was lawful possessor and owner of 1/2 southern portion of the suit land and further held that the mortgage deed was void ab-initio and finally suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties concurred with the findings recorded by the trial court and dismissed the appeals preferred by both the parties and hence the present appeals.

4. At the outset it must be noted that there is absolutely no substantial question of law involved in these appeals. The learned counsel for the appellant in Second Appeal No.846 of 2005 sought to raise contention to the effect that when the deed of mortgage was

specifically for a period of 15 years, the suit filed before 15 years was premature. However, in this regard, the contents of the document give some other story. The recitals of the document shows that within the period of 15 years the property could be redeemed and as such it cannot be said that the suit was premature, which was filed within the period of 15 years as per recitals of the document.

. Similarly, the learned counsel for the appellant sought to raise the question that the contention regarding the tenancy of the concerned party was raised and therefore, by virtue of the provisions of Bombay Tenancy and Agricultural Land Act, the issue should have been referred to the tenancy court. Both the courts below have disagreed with this proposition. It is to be noted that the record shows that the plea taken by the defendants as the question relating to the tenancy was involved in the suit the civil court has no jurisdiction. It was also contended by the defendant no.6 that the title of the suit property was derived to him through succession and some sisters of the defendant no.6 was not added as the necessary party, and therefore, the suit was not tenable for want of

jurisdiction. In this regard the names of sisters of defendant no.6 were not disclosed by the defendant, nor it was proved by the defendant no.6 that they were necessary party. It was further contended that the name of defendant no.6 was entered to the record of rights as a Manager of the joint family and this fact is enough, as observed by both the courts below, to decide the suit on merits, and therefore, both the courts were of the view that for want of evidence and in view of the fact that the proceeding under Section 32(g) of the Bombay Tenancy and Agricultural Lands Act was disposed of by the competent authority, there was no question to raise any question regarding tenancy. I prefer to agree with the findings recorded by both the courts below. It is also to be noted that mere raising of issue of tenancy is not sufficient unless it is supported by cogent and circumstantial evidence on record to show that the dispute cannot be effectively adjudicated without reference to the court of competent jurisdiction on the issue of tenancy, which is not the case in the present suit. Under the circumstances I hold that the concurrent findings recorded by both the courts are legal and proper and therefore, it would brook no interference.

5. In the result boh the appeals stands dismissed with no order as to costs. Consequently Civil Application No.599 of 2005 and Civil Application No.466 of 2005 also stands dismissed with no order as to costs.